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Supreme Court, U.S.
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No. 04-1430

In The

Supreme Court of the United States

ALBERT JACKSON,

Petitioner,

v.

DELAWARE RIVER AND BAY AUTHORITY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

REPLY TO BRIEF IN OPPOSITION

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1. THE BRIEF IN OPPOSITION TACITLY ADMITS PETITIONER'S CONTENTIONS

Supreme Court Rule 15.1 encourages parties to point out inaccuracies or misstatements of fact. The Brief in Opposition suggests that there are such misstatements in the Petition, but it doesn't discuss any.

Page 8 of the Brief in Opposition states that Jackson contends that the District Court "failed to consider DRBA's concession of the merits of the underlying claim for maintenance and cure, and this allegation is patently untrue." The Brief then continues, "For purposes of the dispositive motion filed before the District Court, it was conceded only that, with respect to the underlying claim, there were genuine issues of material fact which would have precluded the finding of summary judgment on the merits."

Page 2 of DRBA's Brief in Support of the Motion for Summary Judgment filed in the district court reads in relevant part as follows:

> "For the purposes of this motion for summary judgment, Defendant does not dispute the underlying merits of Plaintiff's claims, but rather maintains that Plaintiff's claims are precluded by the terms of a Release and Settlement Agreement executed by the Plaintiff on July 1, 2002."

Nowhere in the 28 page Brief in Support of the Motion for Summary Judgment is there any reference whatsoever to any genuine issues of material fact pertaining to the underlying claim. In fact, there was no discussion of the underlying claim at all. There could not have been any factual disputes because DRBA admitted that it had never provided orthotics or reduced Jackson's working hours below 11 per day despite Jackson's requests that they do

so. It was also undisputed that DRBA's personnel misled Jackson for 2 years concerning the nature of his malady. How could DRBA possibly dispute the content of Long's letter of April 4, 2001, which is on pp. 6, 7 of the Petition?

The Brief in Opposition says that DRBA submitted "ample" evidence to support the handwritten memorandum and the typed release. Essentially, this "evidence" dealt with Jackson's litigation history and the proceedings before Judge Simandle. This "ample" evidence was virtually all cited in the district court's opinion. That opinion contained only one reference to Jackson's brief and no reference to the hundreds of pages of factual material submitted by Jackson, all of which was under oath. The single reference to Jackson's brief said that the two years of deception practiced by DRBA was irrelevant, even though that deception obviously had an impact on Jackson's state of mind when the negotiations took place.

Jackson earnestly submits that the "ample" evidence is not enough to satisfy the burden imposed by *Garrett v. Moore-McCormack Co.*, 317 U.S. 239 (1942). Furthermore, the district court opinion and DRBA's Brief in Support of the Motion for Summary Judgment, which the opinion mirrors, are more notable for what they failed to mention than what they say. The same is true of the Brief in Opposition.

For example, none mentions how the contract and RICO claims and union issues in Jackson's litigation history enhanced his understanding of his maritime personal injury rights. None acknowledges that the earlier lawsuits and incident reports to DRBA all involved traumatic injuries and none involved a congenital condition made worse by excessive work hours. All refer to Jackson's

knowledge of his achy feet, but this is undisputed. Of course Jackson knew his feet hurt since he had been taking Celebrex for pain for two years, and his feet probably hurt during the days he attended the aborted trial. They certainly hurt when he was denied a wheel watch by a racially biased captain who required him to stand for 11 hours. None explains how Jackson could or should have recognized that he had Jones Act/maintenance and cure claims when his own lawyer testified repeatedly that he did not recognize them as marine personal injury claims.

Neither the Brief in Opposition nor the opinion mentions that DRBA's counsel, at the hearing before Judge Simandle, summarized the "essential" terms of the settlement but said nothing about a settlement of "all" claims even though that ambiguous, undefined word appeared in his handwritten release. Both discuss the questioning of Jackson by Judge Simandle, but neither mentions Judge Simandle's very precise description of what claims had just been settled. Neither mentions that DRBA's Chief Operating Officer testified that Judge Simandle's description was precisely what he thought had just been settled by DRBA.

Both discuss the consideration for the settlement, but neither acknowledges that no money whatsoever was paid to settle maritime personal injury claims. Neither acknowledges that maritime claims were not discussed. The district court's opinion says that a separate sum was paid to settle "all" claims, but it cites no testimony to support this. The Brief in Opposition does not cite any such testimony because there isn't any. DRBA's Chief Operating Officer said that DRBA paid from its own funds to sever Jackson's employment, which was its primary goal. Neither the opinion nor the Brief in Opposition acknowledges

the requirement set out in *Harden v. Gordon*, 11 Fed. Cas. 480, 485, No. 6047 (1823) and recognized in *Garrett*, that there be a *quid pro quo* for the claims being given up by the seaman. In this case there was none.

Neither acknowledges that the typed Settlement and Release Agreement fails to identify anything which even hints at a settlement of maritime claims. The Brief attempts to denigrate the Affidavit submitted by an experienced, well-known maritime defense personal injury practitioner by suggesting it was not based on "first hand knowledge." How can a maritime personal injury practitioner, during 39 years of practice, fail to acquire "first hand knowledge" of the routine content of releases when he has prepared "countless" as he put it.

Both the Brief in Opposition and the opinion rely on the language in the typed Release, which is considerably broader than the finding made by Judge Simandle. Neither, however, acknowledges the understanding between counsel concerning the exclusion of the orthotics issues. DRBA's counsel admitted that there was a discussion, but he couldn't recall the content. Jackson's counsel testified very clearly that he had an agreement with DRBA's counsel that the orthotics issues would survive the settlement. This testimony is in the Appendix.

The wording of the release was recognized as the sole basis for the district court's opinion by the Third Circuit's opinion. That court did not even mention *Garrett* and said nothing about the burden imposed by *Garrett*.

Finally, neither the Brief in Opposition nor the district court opinion discussed the wardship doctrine or the fiduciary duties imposed upon the shipowner. Neither acknowledged that the district court could grant Summary

Judgment only if there were no factual disputes and that the district court could make no credibility judgments and had to draw all influences in Jackson's favor. These basic principles have been categorically ignored.

2. THE PUNITIVE DAMAGES DISCUSSION MAKES NO SENSE

DRBA's discussion of the punitive damages issue reflects either incompetence or a deliberate attempt to mislead this Court, which wouldn't make sense because this Court makes the law.

Jackson is seeking punitive damages for DRBA's callous and recalcitrant refusal to pay maintenance and cure concurrently with the need, and this is unrelated to a Jones Act recovery. DRBA's effort to relate this to the Jones Act is not far from the way it misled Jackson into believing he had no maritime rights because his feet condition was congenital.

3. CONCLUSION

This Petition was filed because this Court is Jackson's last hope for obtaining justice. For almost 200 years this Court has described seamen as the "wards" of the federal courts, but so far in this case that has not meant much. Jackson has had a right granted to him by Congress, a jury trial, taken away by a hastily written, inaccurate, biased opinion which displays an arrogant disregard of Jackson's rights and this Court's jurisprudence in several areas as well.

Jackson earnestly requests this Court to grant the Petition; reverse the Court of Appeals and direct that this

case be remanded for a trial on the merits, with the release stricken. Jackson also requests leave to develop a trial record on the punitive damages issue.

Respectfully submitted,

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